

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.509/99.

Dated: 14/12/1999

Sushil Ganesh Sarode & Ors.

Applicants.

Mr.D.V.Gangal

Advocate
Applicants.

Versus

Union of India & Ors.

Respondent(s)

Mr.V.D.Vadhavkar

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman;
Hon'ble Shri B.N.Bahadur, Member (A).

- (1) To be referred to the Reporter or not? *YV*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *YV*
- (3) Library? *YV*

R.G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.509/99.

Tuesday, this the 14th day of December 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

1. Sushil Ganesh Sarode,
R.B.II F/12,
New Diesel Railway Colony,
Dhole Patil Road,
Pune - 411 001.
2. Rohidas Bhagwan Dudhane,
Gangotri Apartments,
228, Somwar Peth,
Khadiche Maidan,
Pune - 411 011.
3. Sachin Sudhakar Kapse,
1708, Sadashiv Peth,
Near S.P.College,
Pune - 411 030.
4. Nagnath Haribhau Kamble,
Sainath Colony,
Sashtri Chowk,
Alandi Road,
Bhosari,
Pune - 411 039.
5. Mukesh Babanrao Patankar,
S. No.5, Keshav Nagar Mundhawa,
Pune - 411 036.
6. Anthoni P. Fernandes,
C/o. Chagan Kondiba Bhokare,
Bhoiraj Housing Society,
Mundhawa,
Pune - 411 036.
7. Santosh Tulshiram Gaikwad,
S.No.40/3, Keshav Nagar,
Mundhwa,
Pune - 411 036.
8. Ram Dashrath Dudhane,
Gangotri Apartments,
228, Somwar Peth,
Khadiche Maidan,
Pune - 411 011.
9. Mayur Mahadev Kemse,
J.P.Nagar,
Behind PCMT Depot,
Gavhane Wasti,
Bhosari,
Pune - 411 039.

10. Shrinivas Vasant Ranade,
C/212, Raj Darshan Society,
Louis Wadi,
Thane (W) - 400 604.
(By Advocate Mr.D.V.Gangal)

.... Applicants.

Vs.

1. The Union of India, through
The General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
2. The Divisional Railway Manager,
Pune Division,
Central Railway,
Pune - 410 001.
3. The Chief Personnel Officer,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001.
(By Advocate Mr.V.D.Vadhavkar)

.... Respondents.

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. Since the point involved is a short point, after hearing both sides, we are disposing of this application at the stage of admission itself. We have heard Mr.D.V.Gangal, the learned counsel for the applicants and Mr.V.D.Vadhavkar, the learned counsel for the respondents.

2. The short point for consideration is whether the applicants have made out a case for quashing the Notification dt.29.12.1998 and for further consequential reliefs.

3. Few facts which are necessary for the disposal of this application are as follows.

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The Railway Administration issued the impugned Notification dt. 29.12.1998 calling for applications for filling up 106 vacancies in the post of Khalasi. A condition was incorporated in the Notification that only trained apprentices who have NCTVT test certificate are allowed to apply for the post. But, still the applicants responded to the advertisement and filed the applications for the said post. They were not called for written test or interview. The respondents went ahead with the Notification and number of NCTVT candidates applied and selected some of them and appointed them. The applicants are aggrieved since the recruitment is confined to NCTVT certificate-holders which is contrary to the Recruitment Rules. According to Recruitment Rules, the only qualification for the post of Khalasi is a pass in 8th standard. Therefore, it is the applicants' case that they have been deprived of the opportunity of being considered for the post in view of the illegal condition put in the Notification and therefore, the Notification should be quashed.

4. The substance of the defence is that since there are many trained candidates with NCTVT certificates without job, the present recruitment to the post of Khalasi was held to absorb the NCTVT candidates and that the respondents have not committed any irregularity or illegality in issuing the impugned Notification.

5. There is no dispute that the recruitment qualification as per rules for the post of Khalasi is only "8th standard pass". In such a case, how can the Department fix a higher qualification or a different qualification and deny opportunity to the other

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candidates who have the minimum qualification as per Recruitment Rules. All the applicants have passed 8th standard. Now, in view of the condition put in the Notification, the applicants are not called for written test or interview. Whether, it is open to the Railway Administration to prescribe such a qualification which is not as per Recruitment Rules.

6. It is not even disputed before us that as per recruitment qualification, the only qualification for the post of Khalasi is 8th standard pass. This is further clarified by the Railway Board Circular dt. 4.12.1998 where it is again reiterated that the minimum qualification for recruitment to Group 'D' post is pass in 8th standard (vide page 72 of the paper book).

7. The respondents have relied on three documents.

At page 82 of the paper book, we have a Notification dt.26.8.1996 which pertains to Group 'C' post and we are not concerned with the same. We are only concerned with qualification for Group 'D' posts.

Then, we come to page 83 of the paper book which pertains to a letter dt. 16.9.1996, again there is no change in the recruitment qualification for a Group 'D' post, but it only says that other things being equal, a candidate who is a trained apprentice in the relevant trade will be given preference over a candidate who is not such an apprentice. There is a further condition that this is made applicable to such categories of Group 'D' posts in which apprentice pass under the Apprentice Act in the relevant trade as a prescribed qualification. In para 3, it is reiterated that there is no change in the procedure of recruitment, but all things being equal, the candidates with apprentice training should be given preference over the candidate

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who has not undergone apprentice training. Then, what is more?, In the next letter dt. 13.7.1999 which is at page 90 of the paper book, the matter is further clarified and re-affirmed. Here also the Railway Board emphasises that apprentice trainees must be given preference other things being equal. We are concerned with para 3 which reads as follows:

"In other words, while there will be no change in the procedure of recruitment and the selection for recruitment will be in accordance with the merits of the eligible candidates, where other things are equal between two or more candidates, the candidate who is a Course Completed Act Apprentice trained in Railway Establishment will be given preference over the candidate who is not such an apprentice for recruitment to Group 'D' posts."

Here also, the Railway Board has clarified that there is no change in the Recruitment Procedure, but if all things are equal, candidates with apprentice training should be given preference.

Therefore, nowhere the Railway Board has departed from the recruitment procedure or recruitment qualification, but only speaks about giving preference to apprentice trainees in the circumstances mentioned above.

8. But, in the impugned notification, the Railway Board has barred others from applying for the post unless he holds an apprentice training certificate. This is wholly impermissible in law. If the Recruitment Rules provide 8th standard pass as the minimum qualification, then the Railway administration has no right to prescribe some other qualification and bar persons with 8th standard in applying for the job and such an action is contrary to Recruitment Rules. It may be, after all the candidates apply, it is open to the Railway administration to give preference to NCTVT candidates all things being equal as mentioned in the Railway Board letter.

This is not even a case where the Railway Board has relaxed the rules and permitted this particular recruitment only for NCTVT candidates. No such Railway Board order is produced before us. On the other hand, the Railway Board's orders mentioned above are very clear that there is no change in the recruitment policy and procedure except that NCTVT candidates should be given preference all things being equal. It is open to the Railway Board, or the General Manager, if the Rules permit, to relax the rules for a particular recruitment and prescribe certain other qualification in order to clear the back-log of NCTVT candidates. But, no such order is produced in this case.

9. The learned counsel for the respondents contended that short-listing is permitted and this has been approved by the Supreme Court and therefore it is open to the Railway administration to limit the applications only to NCTVT candidates and placed reliance on Union of India and Anr. Vs. T.Sundararaman

and Ors. (1997 SCC (L&S) 988) and ^{Govt. of Andhra Pradesh vs} ~~State of Haryana and Ors. Vs.~~ ^{Raj} ~~P. D. J. P. K. Mani (1993 SCC (L&S) 464)~~ ~~Piara Singh and Ors. (1992 SCC (L&S) 825)~~. There is no dispute

that short-listing is permitted. But, the question of short-listing arises only when all candidates submit their applications, the short-listing cannot be done even before calling for applications. Therefore, the argument about short-listing cannot be accepted.

Similarly, reliance placed by the learned counsel for the respondents on U.P. Parivahan Nigam's case ((1995) 29 ATC 171), is not applicable to the facts of the case. That was a case where the Supreme Court observed that apprentice trainees should be absorbed and their training should not be wasted. In fact, in the general directions given by the Supreme Court it is clearly

mentioned that other things being equal trained apprentices should be given preference over direct recruits. The Supreme Court did not say that the Recruitment should be confined only to trained apprentices. The Supreme Court has only observed that preference should be given to them. The question of preference comes only when there are other candidates. But, in the present case, the Railway Administration has barred other candidates from applying and therefore, the question of giving preference is not at all attracted in this case. Hence, we hold that the impugned notification which is confined only to NCTVT candidates contrary to the Recruitment Rules is bad in law. It is open to the Railway Administration to make it an open competition and while selecting, short-listing can be done and then preference can be given or it is open to the Competent Authority to relax the rules, if permissible under the rules, permitting only NCTVT candidates to apply and not for others.


10. Having held that the impugned notification dt. 29.12.1998 is contrary to Rules, the question is what relief should be given to the applicants. Further question is, what should happen to the appointments made in pursuance of the notification. It is seen from the respondents reply that there were 106 vacancies of Khalasis and 81 candidates have already been appointed on different dates between 17.4.1999 to 20.5.1999. The present OA was filed subsequently on 16.6.1999. Those selected and appointed candidates are not made parties to this OA. If we now quash the impugned notification and the appointments made therein, it will affect those 81 candidates who are not parties before the Tribunal. It is well settled that a Court or Tribunal should not pass order affecting persons who are not parties

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before the Tribunal.

We may also place on record ^{that} Mr.D.V.Gangal, the learned senior counsel for the applicants, fairly did not press for quashing appointments made under the impugned notification. He only prayed that at least for the remaining vacancies, the Railway Administration should be directed to fill up the post as per the Recruitment Rules.

In this connection, we may also refer to a decision of the Apex Court in Sushma Suri's case (1999 (3) SLJ 34 (SC)), which was relied on by the learned counsel for the respondents. That was a case pertaining to appointments of Advocates to Delhi Higher Judicial Service. All Advocates could apply for that post, but the applicants in that case who had been appointed Government Advocates were not called for selection process on the ground that they are not members of the Bar since they have been appointed as Government Advocates. The Supreme Court held that the rejection of the application of those Government Advocates was not correct and they are entitled to be called for selection. But, however, the Supreme Court noticed that by the time the writ petition was filed the recruitment process were going on and at the time of the order of the Supreme Court the candidates had been selected and appointed. Therefore, the Supreme Court observed that it would not be proper to upset such appointments and only declare the law for the future compliance. We therefore, feel that even in the present case, we need not interfere with the appointments of 81 candidates particularly when they are not made parties, when they have been already appointed and they are working in their post. Suitable

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directions can be given for filling up the remaining posts.

11. In the result, the application is partly allowed as follows:

- (1) While holding that the impugned notification dated 29.12.1998 is contrary to the Recruitment Rules, the appointment of 81 candidates in pursuance of the said notification, is not disturbed for the reasons already stated.
- (2) The respondents should fill up the remaining 25 vacancies according to the qualifications mentioned in the Recruitment Rules viz. "pass in 8th standard". However, this direction is without prejudice to the to the Railway Administration to relax the rules, if any, and pass appropriate orders as observed in the course of Judgment.
- (3) In the circumstances of the case, there will be no order as to costs.

B. N. Bahadur

(B.N. BAHADUR)

MEMBER(A)

B.

R. G. Vaidyanatha
14/1/2000
(R.G. VAIDYANATHA)

VICE-CHAIRMAN